Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Telephone Companies	)	WC Docket No. 02-237
	)	
Section 63.71 Application to Discontinue	)	
Expanded Interconnection Service	)	
Through Physical Collocation	)	

COMMENTS AND OPPOSITION OF COVAD COMMUNICATIONS COMPANY

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Introduction

Covad Communications Company (Covad), by its attorneys, hereby respectfully submits its opposition to the Verizon Telephone Companies' (Verizon) application for discontinuance of expanded interconnection service through physical collocation, under Section 214 of the Communications Act, as amended. Covad is a facilities-based nationwide provider of broadband services. Covad's services range from consumer-class ADSL service offerings to business-class SDSL and T1 services. Covad's network reaches over 40 million U.S. homes and businesses in 94 of the top 100 metropolitan statistical areas. In order to achieve the scope of services and nationwide coverage Covad is able to offer, Covad relies on incumbent LEC provided collocation, including physical collocation in incumbent LEC central offices.

Verizon asks the Commission to allow it to discontinue offering physical collocation in its federal expanded interconnection tariffs in the 14 Verizon East, or former Bell Atlantic, states.[1] Verizon's application states that it intends to continue offering virtual collocation through the expanded interconnection tariffs, and continue offering physical collocation through Verizon's state tariffs and interconnection agreements.[2] Verizon also states that it will allow customers to "grandfather" some of the charges related to existing physical collocations established under the federal tariff, and allow customers the option of converting those collocations to physical collocations under Verizon's state tariffs or interconnection agreements.[3]

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[1] *See* Verizon Application at 1.

[2] *See id*.

[3] *See id.*

For the reasons set forth below, Verizon's application does not meet the standards of section 214 of the Act. In particular, Verizon fails to show that its proposed discontinuance will not adversely affect the public convenience and necessity; in fact, Verizon's application barely makes a pretense of showing that it meets the requirements of the statute at all. In addition, Verizon fails to demonstrate that sufficient alternatives will be available to customers no longer able to purchase physical collocation and related services out of the expanded interconnection tariff. Furthermore, Verizon's application unfairly allows it to begin levying charges related to existing physical collocations established under the federal tariffs at rates established in state tariffs or separate, unrelated interconnection agreements. These charges, made in spite of the significant investments competitive carriers have made in reliance on Verizon's expanded interconnection physical collocation services, demonstrate the gross unfairness of Verizon's application. For all of these reasons, Verizon's application should be denied.

Discussion

At the outset, the Commission should note the enormous investment competitive carriers have made in physical collocations through Verizon's expanded interconnection tariffs. Currently, Covad has over 200 physical collocations in the Verizon East states that are ordered out of Verizon's expanded interconnection tariffs, constituting approximately 40% of Covad's existing collocations in the Verizon East states. These numbers show that, like many competitive carriers, Covad has made a significant investment in physical collocations in reliance on Verizon's expanded interconnection tariffs, and continues to rely on those investments in providing service. Furthermore, the

Commission must keep in mind that, not only is Verizon dominant in its provision of physical collocation service, it is the only provider of physical collocation in its central offices in the Verizon East states. Without a regulatory requirement that Verizon offer physical collocation, competitors would be precluded from reaching end users by physically connecting their own physically collocated facilities to Verizon's local loop and interoffice transport transmission facilities. Indeed, it reaches the height of irony that, little more than two weeks after the Commission strongly reaffirmed its longstanding powers under section 201 of the Communications Act to require incumbent LECs to provide cross-connects between collocations, that commenting parties must ask the Commission to once again reaffirm the requirement to provide them with the collocations in ILEC federal tariffs underlying those cross-connects in the first place.[4]

Given the context in which Verizon makes its application to discontinue providing physical collocation in its federal tariffs, it is remarkable that Verizon's application barely makes a pretense of the showing required under section 214 of the statute. As the Commission has previously stated,

> The burden is "cast upon the carrier which wishes to discontinue a service to make proper application for a certificate" "that neither the present or future public convenience and necessity will be adversely affected by [such] discontinuance."[5]

The Commission has also stated that reviewing an application for discontinuance under section 214 requires a delicate balancing of the "benefits to a particular community or

[4] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 02-234, Order on Reconsideration and Order, CC Docket No. 98-147 (rel. Sept. 4, 2002).

[5] *Southwestern Bell Telephone Co., et al., Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, FCC 93-165, 8 FCC Rcd 2589, para. 52 (2003) (citations omitted) (*Dark Fiber Discontinuance Order*).

communities of continued operation … against the burden that would be imposed upon the carrier" of continuing to provide service.[6] According to the Commission:

> A number of factors are considered in balancing the interests of the carrier and the user community. These factors include: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services.[7]

Given Verizon's clear dominance in the provision of expanded interconnection physical collocation services, the showing required of Verizon to meet the standard established in section 214 is dramatically greater.[8] Indeed, it is essentially tautological that a dominant carrier's discontinuance of service would severely impact the "need for service," the "need for the particular facilities in question," and the "existence, availability, and adequacy of alternatives."[9] Given that Verizon is dominant in its provision of physical collocation services, Verizon's application hardly makes the showing required under this high standard. In fact, Verizon's dominance in the provision of physical collocation makes abundantly clear that discontinuance would impose a severe burden on customers of Verizon's service.

Upon closer analysis, Verizon's claim that sufficient alternatives will remain if it is allowed to discontinue physical collocation service is unsupportable. The alternatives Verizon sets forth in its discontinuance application are virtual collocation through the expanded interconnection tariffs and physical collocation available through state tariffs

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[6] *Id.* at 53.

[7] *Id.* at para. 54 (citations omitted).

[8] Verizon acknowledges that it is dominant in the provision of physical collocation expanded interconnection services. *See* Verizon Application at 10.

[9] *Id.*

and interconnection agreements.[10] The notion that virtual collocation is a substitute for physical collocation is absurd – virtual collocation leaves the incumbent LEC with exclusive physical control over the collocated equipment. It is precisely because physical collocation is superior in many respects to virtual collocation that the Commission initially attempted to require incumbent LECs to provide physical collocation in its *Expanded Interconnection* proceedings.[11] In fact, as the Commission stated, physical collocation, not virtual collocation, is the "optimal means to realize [the] benefits" of the Commission's expanded interconnection policy.[12] Moreover, state tariffs and interconnection agreements are of no avail to non-carrier customers such as Internet service providers, for whom virtual collocation would remain the only viable collocation option under Verizon's position. Furthermore, no combination of state tariffs and interconnection agreements offers the reach of Verizon's federal tariffs, which allow new entrants to obtain physical collocation according to a uniform rate structure and uniform terms across the Verizon East footprint. In sum, the substitutes Verizon points to for physical collocation expanded interconnection amount to no substitute at all.

Thus, the burdens that Verizon's requested discontinuance would place on customers are manifest. By contrast, what Verizon fails to show is that it suffers any financial harm whatsoever in providing physical collocation under its federal tariffs. For all of its complaining about <u>state</u> commissions run amok in their conduct of TELRIC

[10] *See id*. at 8-9.

[11] *See*, *e.g., In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*).

[12] *Id.* at para. 10.

rate-setting proceedings,[13] Verizon makes no allegation here that its federal physical collocation rates (including their exorbitant non-recurring initial set-up charges)[14] under-recover the costs of providing physical collocation. Verizon's primary argument against the maintenance of an expanded interconnection physical collocation service appears to be that it wants to prevent competitors from "tariff-shopping" between the state and federal tariffs in the 14 Verizon East states. Far be it for competitors to actually get "the lowest rates" available for physical collocation.[15] These objections, however, have nothing to do with the statutory standard Verizon must meet to obtain discontinuance under section 214. In fact, Verizon's claims about "tariff-shopping," rather than showing Verizon suffers any harm from offering physical collocation under the terms of its federal tariffs, show only that it wishes it could charge competitors even more money for the same service. Given Verizon's clear dominance in the provision of physical collocation services, without a showing that Verizon suffers harm as an offering carrier, the Commission should be extremely leery of Verizon's rationale for seeking discontinuance. Here, the balancing of carrier and customer interests clearly tips against granting Verizon's request.

Verizon also claims that it should be able to discontinue providing expanded interconnection through physical collocation now, because it was only under an obligation to offer virtual collocation in the first place.[16] What Verizon ignores is that,

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[13] *See*, *e.g.,* Verizon ex parte in WC Dockets 01-202, 01-338, 96-98 and 98-147, filed Aug. 16, 2002, at 15-17.

[14] *See infra* at n. 21.

[15] Verizon Application at 3.

[16] *See id.* at 2 (citing 47 C.F.R. § 64.1401(c)).

regardless of its virtual collocation offering, Verizon chose to make physical collocation offerings that carriers such as Covad have relied on to make significant collocation investments. Now Verizon seeks to change the rules of the game, by changing the terms and rates under which Covad can make use of those collocations, augment them, and add to their number. Again, the standard set forth in section 214 is not that a carrier may withdraw a service offering it has chosen to make at its own whim. Rather, the standard established in section 214 is that a carrier may only discontinue offering a service upon making the requisite showing that "neither the present nor future public convenience and necessity will be adversely affected" by discontinuance.[17] As explained above, for a dominant carrier's discontinuance of service, the showing required to meet this standard is dramatically greater. Verizon's claims that its physical collocation offering is optional under the Commission's expanded interconnection rules simply fail to show that discontinuance will not adversely affect customers of this service, namely the "public" component of the "public convenience and necessity" standard in section 214. Yet that is precisely the showing required of Verizon under the statute – a showing that Verizon fails to make.

In addition, the Commission must not allow itself to be beguiled by Verizon's claims of offering to "grandfather" existing physical collocations purchased out of its expanded interconnection tariffs. In fact, Verizon's requested discontinuance would do nothing of the sort. As Verizon makes abundantly clear, it intends to require holders of existing collocations purchased out of the expanded interconnection tariffs to start paying rates from state tariffs or unrelated interconnection agreements even for those existing

[17] 47 U.S.C. § 214(a).

collocations.[18] Specifically, Verizon seeks to require such customers to begin paying for power, additional cross-connects, collocation augments, cable racking, entrance cabling, changes, additions, rearrangements, and "all other miscellaneous services" (whatever that may mean) according to the rates set forth in Verizon's state tariffs or interconnection agreements.[19] As much as Verizon's discontinuance of physical collocation at all would adversely affect the public convenience and necessity for the reasons set forth above, this aspect of Verizon's discontinuance application in particular demonstrates just how grossly unfair Verizon's position is.

As stated above, Covad has made a significant investment in physical collocation in the 14 Verizon East states in reliance on the expanded interconnection tariffs. Specifically, over 200, or approximately 40%, of Covad's existing collocations are physical collocations purchased out of the expanded interconnection tariffs in the 14 Verizon East states.[20] Covad has incurred enormous up-front non-recurring costs in establishing these collocations, requiring a significant financial investment.[21] Now Verizon seeks to exact even higher recurring monthly charges from Covad for these same collocations! For example, the difference in DC power charges between Verizon's FCC-1 tariff and the corresponding state tariffs in the Verizon East states averages a little over $2 per each amp of power per month. Covad estimates that its costs for power alone in the Verizon East states would rise by approximately $200,000 per year if Verizon's

[18] *See* Verizon Application at 5.

[19] *See id.*

[20] *See supra* at 2.

[21] *See*, *e.g.,* Verizon FCC Tariff No. 1, Section 19.7.4 (listing the non-recurring charges for physical collocation, including a $47,686.20 "space and facility" charge for constructing the first 100 sq. ft. of a physical collocation).

application were granted.[22] For Verizon to have already exacted enormous up-front fees from competitors for non-recurring physical collocation charges and then attempt to begin charging higher recurring charges out of its state tariffs is simply unconscionable.

Moreover, Verizon's claimed "grandfathering" gives the lie to any of its claims about "tariff-shopping." In fact, Verizon's discontinuance application demonstrates that it is Verizon that engages in the business of tariff-shopping. Verizon's position would require collocators to begin paying out of separate sets of tariffs for the same collocation. Collocators would be required to separate out which charges for a particular collocation came from one tariff, and which charges for the same collocation came from another. This approach would dramatically increase the administrative burdens for Verizon and for collocators, both in determining the amount of charges due for collocations and in verifying Verizon's bills. In light of Covad's continuing disputes with Verizon over Verizon's unexplained and unverifiable charges in bills to Covad,[23] Verizon's approach in its discontinuance application threatens to increase several times over the administrative burdens collocators face in paying and auditing their bills for collocation charges.

The Commission must not under any circumstance allow Verizon to levy charges for existing expanded interconnection physical collocations that Verizon takes from its state tariffs or interconnection agreements. Not only is Verizon's position grossly unfair to competitors who have established collocations in reliance on the terms of its tariffed

[22] Covad maintains 203 physical collocations purchased out of Verizon's FCC-1 tariff, and estimates that it requires approximately 40 amps of power per month for each central office collocation. Accordingly, 40 amps x $2/amp/mo x 12 mo. x 203 COs = $194,880 per year.

[23] *See, e.g.,* Covad Comments in WC Docket 02-214, filed Aug. 21, 2002; Covad Reply Comments in WC Docket 02-214, filed Sept. 12, 2002 (Verizon Virginia Application for 271 Authorization).

physical collocation offering, it also threatens to significantly increase the administrative burdens such customers face in ensuring that they are billed accurately by Verizon for their collocations. Thus, at a minimum, the Commission must ensure that all of the charges associated with existing collocations purchased out of the expanded interconnection tariffs continue to be levied at the rates set forth in those tariffs. Specifically, this includes the rates in the expanded interconnection tariffs for power, additional cross-connects, collocation augments, cable racking, entrance cabling, changes, additions, rearrangements, and any other charges Verizon seeks to levy based on its state tariffs or interconnection agreements.

Conclusion

For the foregoing reasons, Verizon's application for discontinuance under section 214 of the Communications Act should be denied.

Respectfully submitted,

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